

Notice of Allowability

Application No.

10/689,797

Applicant(s)

ORBAY, JORGE L.

Examiner

Anu Ramana

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment filed on 2/2/07.
2. ☒ The allowed claim(s) is/are 19-27 and 29-40.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☒ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☒ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

Anu Ramana

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with the Attorney of Record, David S. Jacobson, on February 15, 2007. See attached Interview Summary Form.

The application has been amended as follows:

In the claims (see amendment filed on February 2, 2007):

In claim 26, line 2: inserted - - an - - after "at" to correct a minor typographical error.

In claim 33, line 1: deleted "33" and inserted - - 19 - - instead to correct a minor typographical error.

In claim 34, line 2: inserted - - , said drilling - - after "bone" for clarity.

In claim 36, line 2: inserted - - , said drilling - - after "bone" for clarity.

In claim 38, line 2: inserted - - , said drilling - - after "bone" for clarity.

COMMENT ON DRAWINGS

The following changes to the drawings have been approved by the examiner and agreed upon by the applicant:

Replacement sheets for Figures 7-12 are required since the figures appear to be photocopies of informal drawings and have very thick lines.

In order to avoid abandonment of the application, applicant must make these above agreed upon drawing changes.

REASONS FOR ALLOWANCE

The following is an examiner's statement of reasons for allowance.

The claims in the instant application have not been rejected using prior art because no references or a reasonable combination thereof, could be found which disclose, teach or suggest a method of performing an osteotomy including the steps of: drilling a K-wire through a portion of bone; using the K-wire as a guide and positioning a bone plate over the K-wire, the K-wire extending through an alignment hole in the bone plate so that a first portion of the bone plate contacts bone; securing the first portion of the bone plate to the bone; performing an osteotomy; and securing a second portion of the plate on a side of the bone opposite the osteotomy as set forth in claim 19.

The claims in the instant application have not been rejected using prior art because no references or a reasonable combination thereof, could be found which disclose, teach or suggest a method of performing an osteotomy including the steps of: drilling a K-wire through a portion of bone; using the K-wire as a guide and positioning a bone plate over the K-wire so that a first portion of the bone plate contacts bone; securing the first portion of the bone plate to bone by inserting a plurality of pegs with threaded heads in threaded holes in the plate so that the pegs are locked relative to the threaded holes; performing an osteotomy; and securing a second portion of the plate on a side of the bone opposite the osteotomy as set forth in claim 22.

The claims in the instant application have not been rejected using prior art because no references or a reasonable combination thereof, could be found which disclose, teach or suggest a method of performing an osteotomy including the steps of: drilling a K-wire through a portion of bone wherein drilling is parallel to an articular surface at an end of the bone; using the K-wire as a guide and positioning a bone plate over the K-wire so that a first portion of the bone plate contacts bone; securing a first portion of the bone plate to bone; performing an osteotomy; and securing a second

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portion of the plate on a side of the bone opposite the osteotomy as set forth in claims 34 and 36.

The claims in the instant application have not been rejected using prior art because no references or a reasonable combination thereof, could be found which disclose, teach or suggest a method of performing an osteotomy including the steps of: drilling a K-wire through a portion of bone wherein drilling is parallel to an articular surface at an end of the bone; using the K-wire as a guide and positioning a bone plate over the K-wire so that the bone plate contacts bone; securing the first portion of the bone plate to bone; performing an osteotomy by cutting the bone and levering a second portion of the bone plate toward the bone on an opposite side of the cut from where the first portion of the bone plate is secured to the bone; and securing a second portion of the plate on a side of the bone opposite the osteotomy as set forth in claim 38.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anu Ramana whose telephone number is (571) 272-4718. The examiner can normally be reached Monday through Friday between 8:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached at (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AR
February 15, 2007

Anuradha Ramana